



STATE OF IOWA

CHESTER J. CULVER, GOVERNOR
PATTY JUDGE, LT. GOVERNOR

DEPARTMENT OF NATURAL RESOURCES
RICHARD A. LEOPOLD, DIRECTOR

TO: Honorable Governor Chester J. Culver
Mark Brandsgard, Chief Clerk of the House
Michael Marshall, Secretary of the Senate
Ron Parker, Senate Democrat Caucus
Peter Matthes, Senate Republican Caucus
Paulee Lipsman, House Democrat Caucus Staff
Jeff Mitchell, House Republican Caucus Staff
Jamie Cashman, Governor's office

FROM: The Environmental Protection Commission

DATE: January 18, 2008

SUBJECT: Annual Report and recommendations

The Iowa Environmental Protection Commission respectfully submits its Annual Report and Recommendations to the Governor and General Assembly of Iowa pursuant to Iowa Code Chapter 455B 105.5. The Report presents what it considers the major activities and accomplishments of the Environmental Commission and the Department of Natural Resources for 2007. More importantly the Commission submits its recommendations for policy and legislative changes for 2008. These recommendations reflect the issues that the Commission has worked on over the past year and equally important reflect many of the comments we have heard from the citizens of Iowa during our commission meetings and during formal public comment periods on our rules.

We thank you for your consideration of the report and its recommendations. The Commission stands ready to answer any questions you may have on the report and its recommendations.

Sincerely,

A handwritten signature in black ink that reads "David D. Petty".

David D. Petty, Chair

Iowa Environmental Protection Commission:

Charlotte Hubbell, Des Moines
Susan Heathcote, Des Moines
Ralph Klemme, Le Mars
Henry Marquard, Muscatine
Suzanne Morrow, Storm Lake
Paul Johnson, Decorah

Report to the Governor and General Assembly

Iowa Environmental Protection Commission
January, 2008

Pursuant to Code of Iowa Section 455B.105(5) the Iowa Environmental Protection Commission (Commission) submits the following report to Governor Culver and the Iowa General Assembly. As specified in the statute, this report discusses the accomplishments and status of the programs administered by the Environmental Services Division of the Department of Natural Resources. Specifically, the report will make legislative recommendations for consideration by the Governor and General Assembly based on Commission observations regarding the state of the environment in the past year. The report also takes into account comments and concerns the Commission frequently hears from Iowa citizens.

In issuing this report and making these recommendations the Commission encourages the Governor and the General Assembly to continue to consider Iowa's natural resources and the protection thereof when developing statewide policies for economic development. The Commission believes the protection of the environment is consistent with and, in fact, promotes the development of a strong and sustainable economy. We also believe that the need to balance environmental protection and economic development will become extremely important as the state continues to develop its bio-fuels industry. In the rush to develop this resource, which we recognize is of high importance to both Iowa and the United States, consideration must be given to the long term environmental impact of these policies. We would like to see the Legislature appoint a committee that would recommend criteria for growing biofuels in ways that don't damage the environment or release more greenhouse gases than they save

Environmental Accomplishments in 2007

The Commission recognizes that a major accomplishment was the transitioning of State Revolving Fund management from the Iowa Finance Authority to the Department of Natural Resources. These funds provide low interest loans for drinking water and wastewater infrastructure improvements and non-point source water quality projects. The Commission commends both the Finance Authority and the DNR for the cooperative effort to manage and promote these funds. In SFY 2007 the Funds financed over \$95 million in water quality and public health projects. Working together, the Commission, DNR and Finance Authority increased the use of planning and design loans, amended livestock loan rules to make funds more accessible to producers and worked towards developing greater flexibility and usability of these funds. The Commission recommends that the SRF program prioritize wastewater spending on communities needing to upgrade treatment process, prioritize drinking water spending on communities needing to improve treatment processes and ensuring adequate sources and prioritize spending on getting unsewered communities to install collection and treatment systems.

In June 2007 the Commission adopted rules regarding Sanitary Landfills for Municipal Solid Waste Facilities for groundwater protection and the disposal of non-hazardous wastes. These rules require impermeable liners and upgrading of groundwater contamination monitoring systems. The Commission recognizes that these rules were controversial and initiated an unusually long period of public comment and negotiation with the regulated community in order to obtain an Iowa solution to the Federal Clean Water Act requirements. The Commission believes that these rules

reflect a balance between environmental protection and the legitimate requirements of the regulated community. The Administrative Rules Review Committee has put a hold on these rules, however, the Commission strongly believes that the public interest of the state requires these rules to go forward.

The DNR has been implementing the Use Assessment and Use Attainability Analyses (UAA's) classifications of Iowa's rivers, perennial streams and lakes and has accomplished the field work for this program. The adoption of the specific rules relating to individual UAA's will be a priority of the commission in 2008. In response to public comment, the Commission requested DNR staff to develop a more user friendly system for identifying stream segments affected by a downgrading of UAA classification. The DNR continues to work on providing the necessary information to the public and Commission for the process to continue. The Commission recognizes that the scope of the project resulted in it taking longer than expected but expects that the UAA program will be completed in accordance with the legislative direction received during the last legislative session.

The Commission adopted rules expanding requirements to demonstrate financial responsibility for appliance de-manufacturers. We received significant public comment regarding the issue and took action in order to protect the environment from damage caused by improper disposal of appliances. The Commission recognizes that illegal dumping of appliances will remain a problem in more rural parts of the state.

The Commission adopted rules addressing land application of sewage sludge, addressed permitting issues on minor water main construction, tightened standards for owners, operators and installers of underground storage tanks, adopted rules relating to the Clean Air Interstate Rule, the Clean Air Mercury Rule, and addressed environmental concerns regarding air quality for grain elevators among other actions. The Commission recognizes an increased level of enforcement activity by the DNR and was active in its administrative duties of addressing referrals to the attorney general and the DNR's enforcement activities.

The Commission continued to address issues relative to the Water Quality Rules adopted in 2006. The Commission passed rules governing the levels of specific pollutants and adopted, in general, the standards contained in the federal Clean Water Act..

Sustainable Environmental Funding

The Commission recognizes the efforts of the DNR and the Sustainable Funding Advisory Committee. We continue to encourage the Governor and General Assembly to enact measures that will provide long-term funding for Iowa's natural resources.

Bio-fuels and State Water Planning

In the Commission's 2006 Report, we recommended that the General Assembly encourage further development of the bio-fuels industry consistent with the state's ability to provide sufficient fuel stock and water. The Commission recognizes the General Assembly's action in creating the Office of Energy Independence and the Iowa Power Fund as advancing that goal. The Commission restates its position that in encouraging the bio- fuels industry the General Assembly should not

relax current environmental standards and should provide the DNR with sufficient resources to handle the increased permitting and enforcement activities that this growing industry will require.

In its last session the General Assembly authorized further study of the state's water resources. The Commission supports these efforts and encourages the development of a State Water plan that will accurately describe our water resources so that proper planning for the management of those resources can occur. The Commission recommends that the General Assembly consider establishing fees for excessive use of groundwater by bio- fuels facilities. We believe increased fees will protect existing water resources and spur research on ways to generate less water usage among bio-fuels plants.

Enforcement of Existing Laws and Rules

In its 2007 Report the Commission stated that the need for stronger enforcement of environmental laws and regulations is a concern of Iowa's citizens. The DNR has advised the Commission that it has improved its enforcement efforts but problems still occur. The continued problem of fish kills from spills from Confined Animal Feeding Operations illustrates this issue. Dumping and other environmental violations occur throughout Iowa but the Department does not have sufficient staff in the field to adequately police these violations. We urge the Legislature to allocate additional resources for better enforcements. The Commission believes that adequate resources be provided to resolve issues relating to unsewered communities and that if necessary enforcement action occur. We commend the DNR for taking action to enforce regulations regarding storm and sanitary sewer separation, however the astonishing increase in the number of bypass incidences this year is viewed by the Commission as alarming and requiring further enforcement action.

Three years ago the General Assembly increased the administrative fine authority possessed by the DNR but the Governor vetoed the legislation. The Commission believes that the public will be better served by increasing the authority of the DNR to levy fines which will provide regulatory flexibility not present in the system. There have been several instances where the Commission referred cases to the Attorney General which could have been handled better with greater administrative flexibility. We recommend that the General Assembly increase the authority of the DNR to issue administrative fines to at least \$50,000.

Recommendations for Legislative Action

In addition to recommendations contained elsewhere in this report the Commission recommends that the General Assembly take legislative action in the following areas:

Clean Air

1. Regulate green house gasses as pollutants.
2. Eliminate the anti-stringency rule contained in Iowa Code 455B.133(4). The Commission was recently forced to relax air standards regarding ethanol plants due to this requirement when the sense of the Commission was that such action was not in the interest of the citizens of the state. Such action would allow the Commission to reach an "Iowa solution" which it has the authority to do so in clean water matters.

Clean Water

1. Increase penalties for permit holders that have 2 or more wastewater bypass events in a year. Standards should allow the Commission to consider unusual weather or other conditions. The Commission should have the authority to order specific remedies including shutting down of facilities where facility owner fails to take corrective measures after 2 bypass events.
2. Develop nutrient standards for NPS pollution

Confinement Animal Feeding Operations

In its 2007 Report the Commission restated its commitment to work with the livestock industry to develop regulations to protect the environment and protect the industry's legitimate needs and concerns. We are frequently asked to resolve disputes related to confinement operations for which we have little or no authority. We believe that the current laws and regulations are not working well for many Iowa citizens, county governments and even the confinement owners. The Commission restates its position from the 2007 Report that County Boards of Supervisors correctly argue that the permit appeal process lacks adequate safeguards and standards for proper siting of confinement facilities; that citizens are often justified in their concerns regarding the proximity of these facilities and the spreading of manure too close to homes and other property. The Commission remains concerned about non source pollution levels of bacteria, nitrogen and phosphorous in surface and ground water. The Commission recommends the General Assembly:

1. Codify the "Agency Discretion" 567 IAC 65.5(3) and 65.103(5). Previous action of the Administrative Rules Review Committee effectively prohibits the use of the rule. We believe that the rule supplies the Director and Commission the needed flexibility to resolve siting issues that cannot be adequately addressed by law or other regulation.
2. Give counties authority for meaningful decision-making regarding siting of new confinement animal feeding operations.
3. Reduce the animal threshold size requirement for a confinement construction permit.
4. Evaluate the current required separation distances of confinement facilities from buildings and public use areas as well as
5. Require a separation distance from buildings and public use areas for applying liquid manure when it is injected or incorporated into the soil within 24 hours
6. Establish standards for odor pollution from confinement facilities.

In September 2007 the Iowa Citizens for Community Improvement, the Sierra Club and the Environmental Integrity Project filed a petition with the US Environmental Protection Agency to withdraw the NPDES program delegation from the State of Iowa. The petition alleges that the State is not administering the permit system governing discharges from CAFO's into state waters. The heart of the petition is that the legal authority given to the DNR is inadequate and that HF 805, enacted on May 23, 2005, does not meet the requirements of federal law. The petition also alleges that interpretations of the NPDES requirements as they relate to CAFO's are incorrect. The DNR is opposing this action. We recommend that the General Assembly review Iowa's statutes in light of this petition to ensure conformity with the Clean Water Act.

The Commission recommends that the General Assembly allows its rulemaking regarding the use of liquid manure on soybean ground to continue. The Commission adopted a rule banning application after 5 years and providing for a decreased application rate in the interim. A regulatory analysis of the rule was requested after initial rulemaking. The Commission believes that, after

reviewing the analysis and in further discussion with the regulated community and environmental protection organizations, an optimum solution can be obtained through rulemaking.

Waste Management

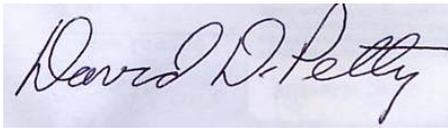
1. Impose a recycling fee on appliances which would be reimbursed when the appliance is returned to the manufacturer or retailer for proper disposal.
2. Establish voluntary goals for household hazardous waste management to divert these wastes from entering sanitary landfills.

Conclusion

It is clear from public comment before the Commission that Iowans want and expect clean air and water. It is also evident that Iowans are concerned about other environmental issues, such as global warming, the effects of CAFO's in their communities. The Commission believes that Iowans, working in a partnership of individuals, government and business representatives, will meet the challenges of environmental stewardship in the 21st Century while recognizing the responsibilities that arise as we position Iowa to become the renewable energy capital of the United States.

The Commission thanks the Governor and the General Assembly for the opportunity to submit this report and invites further inquiry and conversation about the issues raised herein.

Submitted by: Iowa Environmental Protection Commission
Dated: January 18, 2008

By: 

David Petty, Chair

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